

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2150 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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GSRTC

Versus

ADAM MUSABHAI CHAKI

Appearance:

1. Special Civil Application No. 2150 of 1995
Ms. Sejal Sutaria for MR VH DESAI for Petitioner No. 1
MR JS BRAHMBHATT for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Sutaria for Mr. Desai for the petitioner and Mr. J.S.Brahmbhatt, learned advocate for the respondent workman. By way of this petition, the petitioner has challenged the orders passed

by the Industrial Tribunal, Baroda in Permission Application No. 12 of 1992 dated 28th April, 1994 wherein the tribunal has rejected the permission application filed by the petitioner under section 33(1)(b) of the Industrial Disputes Act, 1947 ("the ID Act" for short). This petition was admitted by this Court by issuing rule thereon by order dated 19th July, 1995 and at that time, interim relief was refused by this Court.

During the course of hearing, learned advocate Ms. Sutaria appearing for the petitioner has submitted that while the respondent was on route from Rajkot to Dahod on 1st August, 1989, at that time, his bus was checked by the checking staff; there were 76 passengers in the bus; out of those 76 passengers, 22 passengers were travelling from Godhra to Piplod and they were found without ticket though fare of Rs.4/- instead of Rs. 5/- was recovered by the respondent and tickets were not issued to the said passengers and one passenger travelling from Godhra was found without ticket though an amount of Rs.9/- was recovered and on the basis of the said incident, the workman concerned was served with a charge sheet dated 8/11th September, 1989; thereafter, departmental inquiry was initiated and ultimately, show cause notice was served upon the workman on 16.10.1991. Learned advocate Ms. Sutaria has submitted that one reference No. 156 of 1991 was pending in respect of the line spare filed by the respondent and the permission application was filed by the corporation under section 33(1)(b) of the ID Act, 1947. She has submitted that the tribunal has committed gross error in not considering the bad past record of the respondent workman; she has submitted that the tribunal has also committed an error in rejecting the permission application considering the merits of the matter; she has also submitted that the tribunal has erred in considering and appreciating the evidence which was led in the departmental inquiry and, therefore, the order of the Industrial Tribunal is contrary to law and beyond the jurisdiction and, therefore, same is required to be quashed and set aside.

I have considered the submissions made by Ms. Sutaria. The tribunal has considered an important aspect that when the bus was checked, at that time, explanation was given by the respondent that the bus was checked at about mid night on 1st August, 1989 and the said passengers had boarded from Godhra and thereafter Piplod Stand came and meanwhile, he started road booking and passengers who had boarded from Godhra were sleeping on the seat and they were not permitting the new passengers

who boarded the bus to have a seat and, therefore, the conductor tried to convince such passengers to have seat for such passengers and meanwhile, Piplod had come and the bus was stopped by the checking staff outside the stand at Piplod and at that time, he was doing the road booking and he had issued two tickets to the passengers who had boarded from Godhra but meanwhile, checking inspector had checked the bus and, therefore, this defence of the conductor was considered by the tribunal and it was pointed out that in view of this defence, if the statements of the passengers were not signed by the respondent and allegations were made that he had recovered fare from the passengers and not issued ticket, then, it was the duty of the inspector to check the cash but the cash has in fact not been checked. If the cash would have been checked, then, truth would have come out as to whether he had recovered the fare or not because surprise checking of cash will give correct result and answer to the allegations whether the allegations are true or not. This aspect was considered by the tribunal while passing the impugned order. Specific question was asked to the checking inspector and the answer was that passengers may not cry for bus becoming late, the cash was not checked and even at the last stand also, cash of the conductor was not checked. Another reason given was that they have to check other buses as per the programme and, therefore, they have not checked cash of the conductor and, therefore, the inquiry officer has relied upon the oral evidence as well as the report of the reporter and the statements of the passengers which were not signed by the respondent conductor and after appreciating all these aspects of the matter, the tribunal has come to the conclusion that this is the vital defect in the proceedings and the authority which has come to the conclusion that the misconduct is found to have been proved in absence of the checking of the cash is not legal and on the basis of such findings, the tribunal has come to the conclusion that initially in respect of the same incident, the respondent was line spared and thereafter, decision of dismissal was taken and, therefore, it was considered to be mala fide by the tribunal and considering all these aspects of the matter, the tribunal has come to the conclusion that the permission to dismiss the workman cannot be granted. However, Ms. Sutaria has contended that the tribunal has not considered past record of the workman which was bad. From the record, it is not becoming clear as to whether the past record was produced before the tribunal or not and she also has not been able to answer positively that such record was produced before the tribunal. Even otherwise, since the tribunal has come to the conclusion

that the misconduct as alleged was not found to have been proved and vital defect of not checking the cash and when the passengers' statement were not signed by the respondent, then they have to be proved by the authority by checking the cash which has not been done by the authority and no independent witness has been examined in that regard. Therefore, on this count also, past record, even if it would have been there, same is irrelevant. Upon perusal of the impugned order passed by the tribunal, according to this Court's opinion, the tribunal has rightly appreciated the facts which were on record before it and has given cogent reasons in support of its conclusions. Ms. Sutaria has not been able to point out any jurisdictional and/or procedural error committed by the tribunal. The tribunal is entitled to consider the findings whether it is based on legal evidence or not and in this case, that aspect has rightly been examined by the tribunal. This aspect has been examined by the apex court in case of CBI, New Delhi versus Prakash Chand, reported in 1969 II LLJ 377 wherein the scope of the jurisdiction of the tribunal to interfere with the findings of the inquiry officer of the domestic inquiry has been explained by the apex court. Therefore, in view of the said decision and also in the facts and circumstances of the case, the tribunal was right in coming to such conclusion and, therefore, according to my opinion, the tribunal has committed no error in passing such an order. It is also necessary to note that in view of the rejection of the permission application, the respondent workman cannot be dismissed from service and considering this aspect of the matter, while admitting this petition, interim relief has not been granted by this court. Considering all these aspect of the matter, according to my opinion, there is no substance in this petition and the same is required to be dismissed. Same is accordingly dismissed with no order as to costs. Rule is discharged.

3.4.2002. (H.K. Rathod, J.)

Vyas